

No. 10394

United States
Circuit Court of Appeals

For the Ninth Circuit.

ADOLPH SUNDBERG,

Appellant,

vs.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESS OF COUNSEL.

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Failing Building
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MR. HAROLD A. SEERING,

Attorney for Appellee

802 Northern Life Tower
Seattle, Washington

MR. J. GORDON GOSE,

Attorney for Appellee

657 Colman Bldg.,
Seattle, Washington. [1*]

In the District Court of the United States for the
District of Washington, Northern Division

No. Civil 449

ADOLPH SUNDBERG,

Plaintiff,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Defendant.

COMPLAINT

For cause of action, plaintiff complains and alleges:

I.

Plaintiff is a citizen of the State of Oregon, and defendant is a corporation incorporated under the laws of the State of Washington, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3000.00.

II.

During all of the times herein mentioned the defendant was the owner of the diesel motorship "Commonwealth", and at the time herein complained of was using it in the transportation of certain commodities in interstate commerce between the State of Washington and the Territory of Alaska.

III.

During the month of May, 1940, plaintiff was em-

ployed by defendant as a member of the crew of the aforesaid vessel to assist in operating the same from Seattle, Washington, to Port Williams, Alaska, and defendant agreed to furnish to plaintiff transportation and meals during said voyage, and to furnish to plaintiff upon the arrival of said vessel at its destination with employment in the operation of certain fishing boats owned by defendant upon navigable water, and defendant undertook to pay plaintiff for his services as such fisherman upon the basis of the quantity of fish caught. Plaintiff cannot particularly specify what his earnings for said voyage would have been, but is informed and believes and alleges that the same would have been during the 1940 fishing season a sum in excess of \$1000.00, and plaintiff's employment during [2] said season was of a value to him equal to a wage of \$200.00 per month as a shore worker.

IV.

On May 21, 1940, said vessel was engaged upon said voyage and was being navigated in the territorial waters of Alaska at a point which plaintiff cannot particularly specify but which was near Anchorage, Alaska; and thereupon, by reason of the negligence of defendant, its officers, agents and employes in the particulars hereinafter specified, plaintiff sustained a gunshot wound through his left hand while upon the deck of said vessel, and was caused to suffer great physical pain and mental anguish and to be crippled and lamed in his said left hand, and the usefulness thereof was destroyed.

V.

In the operation of its said vessel and the maintenance thereof defendant was careless and negligent in that although the master of said vessel, Seth Christensen, well knew that said vessel was occupied by a number of employes and that the same vessel was a small vessel and the deck thereof crowded, said master carelessly and negligently permitted and allowed persons on said vessel to be in possession of high powered rifles and to fire the same from and across the deck of said vessel, to the great and extreme hazard of the members of the crew of said vessel, including plaintiff, and carelessly and negligently failed, after notice that said rifles were in possession of persons on said vessel and were frequently being fired therefrom, to restrain or prevent possession and firing of said rifles, and by reason of the presence of said rifles and the failure of the master of said vessel to prevent the same being promiscuously fired about and upon the deck of said vessel, said vessel was rendered and was unseaworthy, and the decks thereof were rendered extremely unsafe and dangerous for occupancy by members of the crew of said vessel, and in the particulars aforesaid defendant failed to keep and maintain the deck of said vessel reasonably safe for the use and occupancy of the members of the crew of said vessel.

Defendant was further careless and negligent in that a member of the crew of said vessel, one Lew Varner, at the time aforesaid carelessly and negligently fired a high powered rifle from a point on the deck of said vessel [3] behind plaintiff, past plaintiff's head and body, and in such close proximity

to plaintiff that the ball thereof struck plaintiff's said left hand, inflicting the injuries herein complained of.

The negligence of defendant and its aforesaid master, and the aforesaid member of the crew of said vessel, said Lew Varner, was the direct and proximate cause of the injuries and damage suffered by plaintiff as aforesaid.

VI.

Prior to these injuries plaintiff was a strong, able-bodied man, capable of earning \$200.00 per month at shore wages, and actually engaged in employment upon said vessel on the aforesaid fishing voyage. By these injuries he has been made incapable of the use of his left hand and has been permanently incapacitated for the performance of the labor incident to his usual employment, and has incurred expenses in the amount of \$284.85 for hospitalization at Anchorage, Alaska, and in other amounts which he cannot particularly specify but which he alleges will aggregate the further sum of \$250.00.

VII.

Plaintiff elects to maintain this action under the provisions of Section 33 of the Act of June 5, 1922, C. 250, 41 Stat. 1007.

For a Second and Alternative cause of action, plaintiff alleges that by reason of the injuries mentioned and set forth in his first cause of action herein, plaintiff became and was disabled and injured while in the employ of defendant under the circum-

stances set forth in said first cause of action, and required and was entitled to wages at the end of the voyage of said vessel, and to maintenance during the disability created by said wound and to cure, according to the rules in admiralty. The voyage of said vessel included a trip from Seattle, Washington, to Port Williams, Alaska, employment there during the 1940 salmon fishing season, and return to Seattle, and plaintiff's wages for said voyage would, as plaintiff is informed and believes, have amounted to the sum of \$1000.00. Defendant failed to furnish plaintiff care and cure by reason of his disability, and plaintiff has incurred a hospital bill at Anchorage, Alaska, in the sum of \$284.85. Plaintiff was under treatment and care for his said [4] injuries for the period of three months next following the same, and his maintenance during said period was of the reasonable value of \$2.00 per day, or \$60.00 per month, being the aggregate sum of \$180.00.

Wherefore, plaintiff prays for judgment against said defendant for the sum of \$20,000.00 on his first cause of action herein, or, if it be adjudged that defendant is not liable in damages for said injuries, that in the alternative he may have and recover of and from defendant his wages to the end of said voyage in the sum of \$1000.00, or such sum as may be adjudged therefor, his hospitalization expense

in said sum of \$284.85, maintenance in the sum of \$180.00, and his costs and disbursements herein.

ARTHUR I. MOULTON

Attorney for Plaintiff

Address: 712 Failing Building, Portland, Oregon.

On trial of the foregoing civil action, plaintiff will demand trial of the issues thereof by jury.

ARTHUR I. MOULTON

Attorney for Plaintiff

[Endorsed]: Filed Dec. 10, 1941. [5]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant Washington Fish & Oyster Company, a corporation, and, for its answer and defenses to plaintiff's complaint, admits, denies and alleges as follows:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I

Defendant admits the allegations of Paragraphs I and II of said complaint.

II

Answering Paragraph III of said complaint, defendant admits that, at approximately the time al-

leged, plaintiff was being transported to Port Williams, Alaska, as an employee whose employment was to begin upon arrival at said destination, and not as a seaman. Defendant admits that, upon arrival at Port Williams, plaintiff was to be employed in fishing operations, his remuneration to be determined upon the basis of the quantity of fish caught; otherwise, defendant denies each and every remaining allegation in said paragraph contained.

III

Answering Paragraph IV, defendant admits that, at approximately [6] the time and place therein alleged, the plaintiff sustained an injury to his left hand as a result of a gunshot wound; otherwise, defendant denies each and every remaining allegation in said paragraph contained, and particularly denies that said occurrence was the result of any negligence on the part of defendant, its officers, agents or employees.

IV

Defendant denies the allegations of Paragraph V.

V

The defendant has no information sufficient to form a belief as to the allegations of Paragraph VI and therefore denies the same, and particularly denies that plaintiff has been damaged in any sums as alleged, or at all, by reason of any negligence or liability of any nature on the part of defendant.

For answer to the second and alternative cause of action, defendant denies each and every allega-

tion in said paragraph contained, and particularly denies that plaintiff sustained any damages as alleged in said paragraph, or at all, by reason of any liability on the part of defendant.

Third Defense

As an affirmative defense to plaintiff's complaint, defendant alleges that any injuries sustained by plaintiff were proximately caused or materially contributed to by plaintiff's own negligence.

Fourth Defense

As a second affirmative defense to plaintiff's complaint, defendant alleges that plaintiff, having full knowledge of the situation in regard to the use of firearms on the boat "Commonwealth," elected to participate in the use of said firearms, and to assist therewith, and the risks incident there to were [7] voluntarily assumed and incurred by plaintiff.

Wherefore, defendant prays that plaintiff's action be dismissed; that plaintiff take nothing thereby, and that defendant have judgment for its costs and disbursements herein to be taxed.

HAROLD A. SEERING

Attorney for Defendant

[Endorsed]: Filed Sept. 22, 1942. [8]

In the District Court of the United States for the
Western District of Washington, Northern Division

No. Civil 449

ADOLPH SUNDBERG,

Plaintiff,

vs.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Defendant.

JUDGMENT

The above-entitled cause having come on regularly for trial before the above-entitled court on December 8, 1942, the plaintiff appearing personally and by Arthur I. Moulton and Edgar E. Neal, his attorneys, and defendant appearing by Harold A. Seering and J. Gordon Gose, its attorneys, and a jury having been empaneled and sworn to try said cause, the trial of said action proceeded with the introduction of evidence upon behalf of plaintiff, and at the conclusion of such evidence, the plaintiff having rested and defendant having thereupon moved for a directed verdict in its favor, and for dismissal of said cause, and the Court having heard argument of counsel for both plaintiff and defendant upon said motions, and having announced in open court that the same should be granted, and having thereupon dismissed the jury;

Now, Therefore, It Is Hereby Ordered and Adjudged that plaintiff's complaint and both causes

of action therein alleged be dismissed with prejudice and with costs to be taxed by the Clerk in favor of defendant and against the plaintiff in the sum of \$.

Done in open court this 21st day of December, 1942.

JOHN C. BOWEN

District Judge.

Presented by:

J. GORDON GOSE

O. K. as to form.

ARTHUR I. MOULTON

Of Counsel.

[Endorsed]: Filed Dec. 21, 1942. [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the above named defendant, Washington Fish & Oyster Company, a corporation, and to its attorneys of record, Harold A. Seering and J. Gordon Gose:

You and each of you will take notice that the above named plaintiff does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment made and entered in the above entitled court and cause on December 21, 1942, wherein and whereby it is ordered and adjudged that plaintiff's complaint and both causes of action therein alleged be dismissed with

prejudice and with costs to be taxed by the clerk in favor of defendant and against plaintiff in the sum of \$80.90, and that plaintiff appeals to said Circuit Court of Appeals from the whole and every part of said judgment.

Dated, March 2, 1943.

ARTHUR I. MOULTON

EDGAR E. NEAL

Attorneys for Plaintiff

[Endorsed]: Filed Mar. 5, 1943. [10]

[Title of District Court and Cause.]

UNDERTAKING FOR PAYMENT OF
COSTS ON APPEAL.

Whereas, Adolph Sundberg, plaintiff in the above entitled court and cause, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment heretofore, to wit, on the 21st day of December, 1942, rendered and entered in the above entitled Court and cause and in favor of defendant and against plaintiff,

Now Therefore, in consideration of the premises and of such appeal, we, Adolph Sundberg, as Principal, and General Casualty Company of America, a corporation, organized and existing under the laws of the State of Washington, do hereby jointly and severally undertake and promise on the part of the said plaintiff and appellant, the said Adolph Sund-

berg, that said appellant will pay all costs that may be awarded against him in the said appellate court if the appeal is dismissed or the judgment affirmed, and will also pay such costs as the appellate court may award if the judgment is modified.

In Witness Whereof, the said Principal has caused these presents to be signed and executed, and the said Surety has caused these presents to be duly executed by its authorized officers, and its corporate seal to be hereunto affixed this 4 day of January, A. D. 1943.

ADOLPH SUNDBERG

Principal

[Seal]

GENERAL CASUALTY COM-
PANY OF AMERICA

By E. J. DeVOE

Attorney-in-Fact

Approved as to form and as to surety.

HAROLD A. SEERING

Attorney for Defendants.

Bond approved 3/5/43.

JOHN C. BOWEN

U. S. District Judge

[Endorsed]: Filed Mar. 5, 1943. [11]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON BY APPELLANT UPON APPEAL.

To the above named defendant, and to its attorneys
of record herein:

You will take notice that plaintiff will rely upon
the appeal herein to the United States Circuit Court
of Appeals for the Ninth Circuit on the following
points:

1. The above entitled court erred on the trial
of said cause in finding and holding that the evi-
dence submitted by plaintiff in said cause, as the
same appears from the transcript of the evidence
and proceedings on file herein, is not sufficient to
entitle plaintiff to have his cause submitted to a
jury for its verdict;

2. Said court erred in ordering and adjudging
that plaintiff's complaint be dismissed, with preju-
dice and with costs;

3. Said court erred in not overruling and deny-
ing defendant's motion in said cause for the dis-
missal thereof, and in not submitting said cause
to the jury.

Dated, March 3, 1942.

EDGAR E. NEAL

ARTHUR I. MOULTON

Attorneys for Plaintiff

Service by copy of the foregoing Statement of Facts to be Relied on by Appellant upon Appeal is hereby admitted this 5th day of March, 1943.

HAROLD A. SEERING

Of Attorneys for Defendant.

[Endorsed]: Filed Mar. 6, 1943. [12]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL.

Plaintiff, having appealed from the judgment in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit and having given bond on appeal, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal and requests the Clerk of the above entitled Court to prepare the record therein in conformity with this designation, towit:

- (a) Plaintiff's complaint;
- (b) Defendant's answer;
- (c) Judgment in said cause, dated December 21, 1942;

(d) Transcript of all the evidence taken and proceedings had in said cause as the same is prepared from the stenographic notes made on the trial of said cause by Ernest E. Getchell, court reporter, and on file herein;

- (e) Notice of appeal;

(f) Undertaking for payment of costs on appeal;

(g) Plaintiff's designation of contents of record on appeal;

(h) Plaintiff's statement of points to be relied on upon appeal.

Dated, March 1943.

ARTHUR I. MOULTON

EDGAR E. NEAL

Attorneys for Plaintiff

Service by copy of the foregoing Designation of Contents of Record on Appeal is hereby admitted this 5th day of March, 1943.

HAROLD A. SEERING

of Attorneys for Defendant.

[Endorsed]: Filed Mar. 6, 1943. [13]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 30 inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing en-

titled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, except as to the reporter's transcript of proceedings, filed March 5, 1943, the original of which is enclosed herewith as part of the record on appeal in this cause, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act Feb. 11, 1925) for making	
record, certificate of return, 30 folios at 05c	1.50
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
	<hr/>
Total	\$7.00
	[14]

I further certify that the foregoing fees have been paid by attorneys for appellant.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 19 day of March, 1943.

[Seal]

JUDSON W. SHORETT,

Clerk

By TRUMAN EGGER,

Chief Deputy. [15]

[Title of District Court and Cause.]

TESTIMONY

Be It Remembered that heretofore, on to-wit, the 8th day of December, A. D., 1942, the same being one of the judicial days of the November, A. D., 1942 term of said court, this cause came on for trial before the Honorable John C. Bowen, one of the judges of said court, and a jury; whereupon, the following testimony was taken and proceedings had in due form of law.

Appearances:

MOULTON & DAVIS, by
A. I. MOULTON, Esq.,

712 Failing Building, Portland, Oregon,
attorneys for the plaintiff.

HAROLD A. SEERING and
JOE GOSE,

Seattle, Washington, attorneys for the
defendant. [2*]

PROCEEDINGS

The Court: In the case of Adolph Sundberg versus Washington Fish & Oyster Co., are the parties ready to proceed?

Mr. Moulton: The plaintiff is ready, may it please the Court.

* Page numbering appearing at foot of page of original Reporter's Transcript.

Mr. Seering: The defendants are ready, your Honor.

The Court: Very well, you may proceed.

(Whereupon, a jury was duly impaneled and sworn.)

The Court: The plaintiff may now make his opening statement of what he expects the evidence will be in this case, and the Court advises the jury that this statement is not evidence; it is merely an advance statement made by counsel for the purpose of advising the jury what to expect in the way of proof, and it is merely made for the guidance of the jury, but not as evidence.

(Mr. Moulton opened the case in behalf of the plaintiff.)

(Whereupon, the plaintiff, to maintain the issues on its behalf, introduced the following evidence.)

MR. ADOLPH SUNDBERG,

the plaintiff herein, was called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Moulton:

Q. You are the plaintiff, Adolph Sundberg, are you? A. Yes, sir.

Q. And where do you reside, Mr. Sundberg? [3]

A. I am residing in Portland, now; but my home address is Mayger, Oregon.

(Testimony of Adolph Sundberg.)

Q. You were born at Mayger, Oregon?

A. Yes, sir.

Q. How old are you? A. Thirty-three.

Q. What has been your occupation during your lifetime?

A. Oh, I worked in the railroad for about twelve years and fished the rest of the time.

Q. You fished on the Columbia River, did you?

A. Yes, sir.

Q. And have you fished in Alaska?

A. One season is all.

Q. What season was that?

A. The season of 1939.

Q. And for whom were you employed during the season of 1939?

A. Washington Fish & Oyster Co.

Q. You also were employed at the beginning of a fishing excursion for the same company in 1940, were you? A. Yes, sir.

Q. Was there any difference in the terms of your employment in 1939 and 1940?

A. No, sir.

Q. Will you please state to the jury what the 1939 arrangement was as to the nature of the work—what you had to do and what compensation you were to receive?

A. Well, we fished on a share, and fished for a man by the name of Swords; that is, there were three of us in the boat, and we received a share each, and the company takes [4] one share for the use of the gear.

(Testimony of Adolph Sundberg.)

Q. And where did you arrange the terms of that employment? A. Right here in Seattle.

Q. What was it to include? Explain what the whole transaction was to include and what the arrangement was and the nature of the whole trip.

A. I just don't understand what you mean.

Q. How were you to get to Alaska, in the first place?

A. I went up on the cannery tender.

Q. What was the arrangement by which you were to go up on the cannery tender?

A. Well, I stand a watch at the wheel, was all.

The Court: Who said what? Who made the arrangements, and whose wheel were you standing by or wheeling? You see, the jury and the Court never heard of this case before.

The Witness: Well, I talked to Mr. Jensen.

The Court: Who is he?

The Witness: He is one of the operators of the Washington Fish & Oyster Co.

The Court: All right.

By Mr. Moulton:

Q. He was the man with whom you made your hiring arrangement? A. Yes, sir.

Q. What did he tell you and what were you expected to do and what did you tell him about the matter?

A. I just asked him if I could go up on this tender, and he said it would be all right.

(Testimony of Adolph Sundberg.)

Q. And on that trip you stood watch? [5]

A. I did.

Q. What watch did you stand on that trip? Was it on the wheel watch? A. The wheel watch.

The Court: What do you mean by the wheel watch?

The Witness: Well, that is to navigate the ship.

The Court: You were steering the ship?

The Witness: That is right.

By Mr. Moulton:

Q. And when you got to Alaska, what service were you to perform?

A. We worked at the cannery first for a few days.

Q. For how long?

A. I think I worked there eight days that year.

Q. What were you being paid for that?

A. They paid us \$5 a day and board.

Q. \$5 a day and furnished your board?

A. That is right.

Q. Who furnished the board during the fishing season?

A. The Washington Fish & Oyster Co. did not furnish the board while we were fishing.

Q. They did not?

A. No. That came out of our earnings.

Q. Who furnished the board on ship?

A. They furnished the board,—the Washington Fish & Oyster Co.

Q. So then you stood this wheel watch. How many hours a day did you do that?

A. That was four hours a day.

(Testimony of Adolph Sundberg.)

Q. And then you worked about eight days, you say? [6]

A. Eight days at the cannery, yes.

Q. And you fished for about how long?

A. From the first of June to the 15th of August.

Q. And the next year with whom did you make the arrangements to make another one of these trips?

A. That was Mark Jensen, also.

Q. The same man? A. Yes.

Q. What did he say and what did you say to him about this trip in 1940?

A. I just asked him if I could go up again this year, and he said it would be all right.

Q. Did you discuss what you were to do?

A. Well, to fish.

Q. Were there any instructions given to you more than had been done in 1939?

A. No.

Q. Nothing else. You reported to the boat, did you?

A. I beg your pardon.

Q. Did you report to the boat? A. Yes.

Q. What was the name of the boat?

A. The "Commonwealth."

Q. How large a boat was it?

A. It is about 110 feet long.

Q. What arrangements did you make with anyone on the boat as to what watch you were to stand?

A. I asked the engineer if I could stand the engine watch, rather than the wheel watch.

Q. What did he say about that? [7]

A. He said it would be all right.

(Testimony of Adolph Sundberg.)

Q. And how many hours does the engine watch require? A. That would be six hours.

Q. That was three hours at a time?

A. Three at a time?

Q. Yes, three at a time? A. Yes.

Q. Can you give us about the size of this boat?

The Court: He said it was 110 feet long.

By Mr. Moulton:

Q. About what was it across the beam?

A. Well, I couldn't say, because it is quite wide.

Q. That is very indefinite. Can you give us about how many feet?

A. Well, I would say about twenty-eight feet.

Q. And what was the load as she left Seattle?

A. We had several skiffs on deck, and there were about five, I think——

Q. I wish you would be a little more specific, Mr. Sundberg, and tell us about what the deck load of the boat consisted of and how much room was left free on the deck.

A. Well, we had a large tank on there for the—they were putting on a cold storage plant this year, and several box boards—fishing boxes that were not made up; they were just the boards, and I think there were five skiffs on deck.

Q. And to what extent did they occupy the space?

A. That left very little room on the deck.

Q. Was there free room on the deck? [8]

A. We could get down one side, but not on the other.

(Testimony of Adolph Sundberg.)

Q. How much room was left amidships?

A. Between the rail?

Q. Yes, between the two rails, across the ship.

A. There wasn't any room except just a little passage-way on the side.

Q. Where was the wheelhouse? Where did the men steering the ship stand?

A. Well, just—well, not quite amidship; more towards the stern.

Q. And now, then, will you tell the jury what occurred after you left Seattle and up to the time you were hurt, in respect to the use of firearms on the boat?

A. Well, there was a lot of shooting on there; but there wasn't any shooting done from the time we left Seattle until—well, we was in Canadian waters the next day, and there was one or two shots fired, but the Captain,—Captain Christensen said, "You had better not fire while we are in Canadian waters, or we might get into trouble."

Q. You heard that, did you? A. Yes, sir.

Q. I was mistaken in my opening statement, was I, in stating that there had been several days,—

A. (Interposing) Yes, sir.

Q. And they had guns, so far as you knew, on the ship?

A. Well, Irving Taylor had a rifle, and Lewis Varner.

Q. Do you know what kind of guns they were?

A. Irving's was a 301, I think and Lewis' was a 250-3,000 Savage.

(Testimony of Adolph Sundberg.)

Q. Do you know much about guns yourself? [9]

A. No, not very much, no.

Q. Have you ever owned a gun in your life?

A. I never have, no.

Q. What would you say you observed about them, as to whether they were guns of high power?

A. Yes, they were; I know that much about them.

Q. When did you first say there were guns on the deck of the ship?

A. The first day after we left Seattle.

Q. Do you know about what time of day?

A. No, I wouldn't say.

Q. Tell the jury what you observed about it and where the captain was when you observed it and what took place when you first saw the guns on the ship?

A. Well, Lewis had his gun up there, and he just—I think it was two times; I am sure it was not over that, and the captain was up on the wheel-house, and the captain said, "You had better put the guns away while we are in Canadian waters, or we might get into trouble."

Q. And what was done in reference to that instruction?

A. They did not do any more shooting.

Q. How long were you in Canadian waters?

A. We were in Canadian waters three days—possibly four.

Q. And when did you next see the guns on the deck of the ship?

(Testimony of Adolph Sundberg.)

A. That is after we left Ketchikan.

Q. Do you know whether that was out of Canadian waters? A. Yes, it is.

Q. How long before you were hurt did you first see these guns after you left Ketchikan? [10]

A. I don't remember exactly how many days it took us to get to Ketchikan.

Q. Well, just as nearly as you can recollect. How many days transpired from the time that the guns first were brought out on the deck again after they had been ordered in until you were hurt? That is, was it one day or two days or three days, or just how many days?

A. I still do not understand what you mean—the first time I saw the guns or——

Q. I will try to approach it in another way. After you left Ketchikan—how soon after you left Ketchikan did you see the guns on the deck again?

A. Very soon after we left; just possibly an hour or two.

Q. How many of the guns came on deck then?

A. Two.

Q. What was done with them?

A. Oh, just shooting.

Q. From what point on the deck were they fired?

A. Mostly from the rail.

Q. Were they at anytime fired otherwise than from the rail?

A. No, not very much, no. I do not recall seeing anybody shooting clear across the deck; but

(Testimony of Adolph Sundberg.)

they would stand inside the deck, possibly four to six feet, and shoot over the rail.

Q. And while this shooting was going on, where was the captain of the ship?

A. Well, at times he was asleep, and at times in the wheelhouse, and at times on the deck.

Q. Do you know whether, when any of this shooting was going [11] on, the captain was in position to see? A. Yes.

Q. What do you know about that?

A. Well, he knew that; he seen it several times.

Q. How continuously, or how much shooting was done from then on?

A. There was quite a bit of shooting at times.

Q. Could you give us an estimate of how many times, or how many shots would be fired in a day from that ship?

A. I would not attempt to make an estimate like that, because I wouldn't say.

Q. What kind of information can you give us upon that subject?

A. I could say there were several shots fired a day.

Q. How many days from the time these guns came out first, after you left Ketchikan, was it that you got hurt?

A. Well, it was about four days.

Q. Was there any day during those four days when there was not shooting from the ship?

A. I could not remember, but I do not think

(Testimony of Adolph Sundberg.)

there was any day that there was not at least a few shots fired.

Q. Did you hear any orders given by the captain to not fire guns?

A. No, sir; not until after I was injured.

Q. Now, then, tell the jury in your own way the circumstances which occurred at the time you were injured?

A. I was in the wheelhouse then, and Walter Mustola was at the wheel, Mr. Christensen, the captain, was also in the wheelhouse, and we sighted some sea lions out in the water, and Taylor—it was his first trip up [12] there, and he had never seen any before; so I dashed to the forecandle and holled for him to come out and look at the sea lions.

Q. Just go ahead and tell what else you said on that occasion.

A. I can't remember the exact words; but I told him to come up and see the sea lions.

Q. Did you say anything about guns or about shooting at them? A. No.

Q. When you did that, what happened next?

A. Well, he came up the companionway and got into one of these—well, one of these wide boards across the deck, and I stood right behind him on some of these box boards.

Q. Did Taylor have his gun?

A. I don't remember whether he did or not; if he did, I didn't see him.

Q. In any event, what was Taylor, particularly, doing there at that time?

(Testimony of Adolph Sundberg.)

A. He was standing there looking at it, and I was pointing over his shoulder.

Q. Where were the sea lions?

A. On the starboard side.

Q. How far away from the ship?

A. I could not judge—possibly a hundred yards or so.

Q. Then what took place while you and Taylor were there looking at the sea lions?

A. I was pointing at these sea lions, and they were—we were passing them, and they were getting so they were [13] behind the cabin, and I looked over to the left, and they were over to the starboard, and then another one came out of the water so I says, “By gosh, there is the thing,” and just as I raised my hand, Lewis Varner let drive.

Q. You raised your hand to point to the sea lions—your left hand. To whom were you pointing them out?

A. To Irving Taylor.

Q. To Irving Taylor? A. Yes.

Q. At the time you were starting to point them out to Taylor, did you know where Varner was?

A. No, I did not know. I did not even know he was on deck.

Q. You had not noticed him before?

A. No, sir.

Q. And where did he—did you then turn around and see where he was to locate him on the ship?

A. After I was shot, do you mean?

Q. Yes.

A. Yes. He came right up to me then.

(Testimony of Adolph Sundberg.)

Q. How far away from you was he when he fired the shot?

A. I would not know, because he was behind me; I did not know he was there.

Q. You did not know just where he stood and fired the shot? A. No, I did not.

Q. Where did the bullet hit your hand?

A. Right in the wrist.

Q. What did you do about that immediately?

A. I just grabbed it and held it out. [14]

Q. What was done after that? You need not go into too much detail about that.

A. They took me in the cabin quarters and administered first aid, and put a splint on it. I think Lewis Varner put the split on it.

Q. And who administered the first aid?

A. Lewis Varner.

Q. The man who fired the shot?

A. Yes, and I believe there was one or two of the other boys that assisted him. I do not know who they were.

Q. About how long after that did you talk about the matter to the captain of the boat?

A. I beg your pardon?

Q. About how long after that did you talk to the captain of the boat about what had happened?

A. Oh, he came in there. I guess he knew what had happened, and he possibly seen it.

Q. What, if anything, did he say about it?

A. Well, he says, "So you got it. That is too bad. I knew I should have told the boys about those

(Testimony of Adolph Sundberg.)

guns; but you know how it is. I hated to do anything."

Q. And then how long did you remain on the ship? A. It was about eight hours.

Q. Where were you taken?

A. To Seldovia. The Coast Guard Cutter "Hiada" was anchored there, and I went aboard her.

Q. Where did she take you?

A. She took me—anyway, they called and took me down from Anchorage and took me to the hospital.

Q. How long were you in the hospital? [15]

A. Four weeks.

Q. What was done there for you?

A. They sewed up the bandages and put the arm in a cast.

Q. What doctor attended you there? Do you know the name of the doctor?

A. Howard Romig, Jr.

Q. From the hospital at Anchorage, where did you go? Did you go from there to a hospital?

A. After I was there four weeks, I went down to—I can't remember the name of the place—Seward.

Q. Were you in the hospital at Seward?

A. I was there in the hospital.

Q. And how long were you in the hospital?

A. I was there just a few days, and then I took a ship and come down to Seattle.

Q. Were you in the hospital at Seattle?

(Testimony of Adolph Sundberg.)

A. Yes.

Q. How long were you here?

A. I was in the hospital at Seattle from the first of July until the twenty-third of November—October.

Q. What was done for you?

The Court: What hospital?

The Witness: That is the Marine Hospital.

The Court: On Beacon Hill here?

The Witness: That is right.

By Mr. Moulton:

Q. You had no bills for services at the Marine Hospital? A. No.

Q. That is a public health service?

A. That is right. [16]

Q. I didn't hear your answer.

A. That is right.

Mr. Moulton: If your Honor please, I would like to have this paper marked for identification.

The Court: It may be marked as Plaintiff's Exhibit No. 1 for identification.

(The paper referred to was marked "Plaintiff's Exhibit No. 1" for identification.)

Mr. Moulton: I understand counsel has conceded that the charge made was reasonable.

Mr. Seering: I am raising no question as to that.

Mr. Moulton: There remains a balance of \$134.

The Court: I wish you would indicate whether or not you are offering it in evidence; and if you are, then make a statement as to its contents.

(Testimony of Adolph Sundberg.)

Mr. Moulton: I do offer it in evidence at this time, your Honor.

Mr. Seering: No objection.

The Court: It is now admitted.

(The paper previously marked "Plaintiff's Exhibit No. 1" for identification was received in evidence.)

Mr. Moulton: I will ask leave not to read it to the jury at this time further than to say that it shows that there is an unpaid balance of \$134.85.

By Mr. Moulton:

Q. And as I understand, did your hand heal up?

A. It did not get the splint off until the 9th of November, and that was in Portland. When I left the hospital here in Seattle, I went as an out-patient; and then I reported [17] to their sub-station in Portland.

Q. How long did you continue to do that?

A. I made two trips; that would be about four weeks.

Q. Was there any provision made by the Washington Fish & Oyster Co. for your maintenance during this period of time after you left the "Commonwealth"?

A. We had no—oh, they sent me \$50 to get to Seward on so I could get into the hospital there.

Q. So this claim you have for maintenance is credited with \$50 on it? A. Oh, yes.

Q. Did they make any other payments or make any other provision for your maintenance while you were curing your hand?

(Testimony of Adolph Sundberg.)

A. Why, no; but they gave me \$15 to go on when I left the hospital.

Q. Then, there is a credit of \$65.

A. That is right.

Q. How soon were you able to use the hand at all?

A. Well, it was several weeks after I got it out of the splint before I could use it.

Q. And to what extent can you use it now?

A. Well, not very much.

Q. Will you show the jury the present condition of the hand?

A. (Witness exhibiting his hand to the jury): I can. I am able to move it about like that (witness illustrating), and that is about as far as I can move the fingers.

Q. You are able to close the fingers and the thumb, are you?

A. I can close the thumb that far (witness illustrating).

Q. Have you been able to use it at all in work?

[18]

A. Oh, yes.

Q. What can you do with it?

A. In my work, I can hold the rod and I can put it into my hand like that.

Q. As I understand you now, you could not use it for some time after you were hurt?

A. Not until in February, and I worked three days.

(Testimony of Adolph Sundberg.)

Q. February of what year? A. This year.

Q. 1942? A. That is right.

Q. Were you able to do any work or take any employment during the remaining part of 1940 and the whole of 1941? A. No, sir.

Q. What did you do in February of this year?

A. I worked for the U. S. Engineers.

Q. What kind of work did you do?

A. I was a tender on a drag run shovel.

Q. Were you able to perform that service?

A. I was able to do that until the safety committee came by, and they laid me off.

Q. And how soon thereafter did you find other employment? A. It was March 7th.

Q. And what work was that?

A. That was checking at one of these defense schools.

Q. How long did you keep on doing that?

A. I worked there about nine days in the first school, and I was transferred after I was laid off about a week—they cut those schools out, and I was transferred to a different class of work until the 7th of June. [19]

Q. Of this year? A. Of this year.

Q. And what have you been doing since then?

A. I have been welding down in the shipyard.

Q. Were you able to do that?

A. I can get by with that.

Q. How can you manage it without the use of your left hand?

(Testimony of Adolph Sundberg.)

A. I really don't need more than one hand. I can brace this a little bit with the other one.

Mr. Moulton: I think that is all on direct examination.

Cross-Examination

By Mr. Seering:

Q. Your arrangements on both occasions when you were employed with the Washington Fish & Oyster Co. were with Mr. Jensen; is that correct?

A. That is correct.

Q. And the sum and substance of your conversation in 1940—that is the year in question when you were injured—was that you asked him if you could go north and fish, and he said that you could?

A. Yes, and I asked if I could go up on this boat "Commonwealth," and he said, "Yes."

Q. And had you not been permitted to go up on the "Commonwealth," would you have paid your own transportation by steamship?

A. That is right.

Q. Many of the men did that?

A. I guess a few did.

Q. And it was largely an accommodation on the part of the Washington Fish & Oyster Co. that you were permitted to [20] go on the tender, provided there was room? A. Well, yes.

Q. It saved you about \$50 or \$51 steamship passage, didn't it? A. That is right.

Q. Now, there was no conversation between you or anyone representing the Washington Fish & Oys-

(Testimony of Adolph Sundberg.)

ter Co. to the effect that you had to stand watch, was there? A. No, sir.

Q. Or that you had to do any work on the way up? A. No, sir.

Q. And there was no conversation with the captain to that effect?

A. Not with the captain, no. I just asked the engineer if I could stand watch.

Q. In fact, the men got together and they actually agreed among themselves that you would stand watches?

A. Well; yes, sir; that is what it amounts to; but it is a known fact that they expect that of you.

Q. But you had no specific orders from anybody? A. No, sir.

Q. Now, what watch were you standing?

A. The engine room watch, as an oiler.

Q. What hours?

A. From three to six a. m. and three to six p. m.

Q. You were oiling? A. That is right.

Q. And on this boat there wasn't a great deal of work to do, was there? You didn't do much work, did you? A. No. [21]

Q. You didn't have much to do? A. No.

Q. What time of day did the boat leave Seattle?

A. It was in the afternoon sometime; I would say it was between three and four o'clock.

Q. On May 11th?

A. On May 11th, yes.

(Testimony of Adolph Sundberg.)

Q. So that by the next day, you were well into Canadian waters?

A. Well, not well into them; but we were in Canadian waters.

Q. It takes only about five hours to get up to the Canadian waters?

A. It was late, and it was dark when we got to the Canadian waters.

Q. There wasn't any shooting, of course, in Puget Sound water? A. No, sir.

Q. As a matter of fact, there wasn't any shooting until just shortly before this accident happened, was there? A. Oh, yes, sir.

Q. Isn't it a fact that is the only shooting from the boat, taking place very close to where this accident occurred? A. No, sir.

Q. Now, on this occasion, you called down the companionway to Irving Taylor asking him to come up, didn't you? A. That is right.

Q. Did you call to anyone else? Did you call down and say, "Hi, fellows, come up here"?

A. I called to Irving to come up, because I knew he had not been up there before; all the rest of the fellows had. [22]

Q. Did you tell them to bring their guns?

A. No, sir.

Q. Did you know that Irving had a gun?

A. Yes, sir.

Q. You knew that he had done some shooting before this, didn't you? A. Yes, sir.

(Testimony of Adolph Sundberg.)

Q. And you knew, did you not, that he brought his gun up with him on this occasion?

A. I do not recall whether I did or not.

Q. You didn't. He was standing right in front of you, I believe you said? A. Yes, sir.

Q. You were pointing the sea lions out to him?

A. Yes, sir.

Q. Now, can you tell me definitely whether he had his gun or whether he did not?

A. I do not remember whether he did or not. If he did shoot it, I would know.

Q. As a matter of fact, he was pointing at the sea lions with his rifle, wasn't he?

A. I don't think so.

Q. You have no recollection of that at all?

A. No, sir.

Q. What took place, wasn't it, that he was aiming, and the sea lions had gone under the water just before he came up there, and you pointed out where they were?

A. No. They will still up when he got there.

Q. And he put his rifle down and then you pointed, and that was the time that you were shot; isn't that right? [23]

A. I pointed out another sea lion, yes.

Q. Now, where were you standing? By the way, let's go back a little bit. Now, it is my—I believe you said that this original group was somewhat scattered. A. Yes.

Q. And this one came up over to the left, and you pointed it out to him? A. Yes, sir.

(Testimony of Adolph Sundberg.)

Q. Where were you standing in relation to the rail?

A. Well, I was standing almost amidships.

Q. And how far from the rail would that be?

A. Oh, I would say about twelve feet or so.

Q. Are you sure that you were not standing—that all the way through you were standing very close to the rail, within a couple of feet of it?

A. I know we were not, because Irving was standing in the skiff—about the middle of the skiffs; so we could not have been standing near the rail, and I was directly behind him.

Q. Wasn't the deck all piled with stuff and different things, and there was a large tank there and so on and——

A. (Interposing): Yes, sir.

Q. (Resumed): —that everything was occupying the center of the deck?

A. No.

Q. Did you know that Lewis Varner had come up on deck?

A. No, I didn't.

Q. And that he had his rifle?

A. No, sir.

Q. You did not know he was there at all? [24]

A. No, I did not.

Q. Was there anyone else that you noticed?

A. No, I did not notice anyone else but Irving and myself.

Q. Had any shots been fired before you were injured?

A. Not right before, no.

Q. How recently had there been shooting?

A. I would not say there had been any shooting that day before I was shot, because I don't remember.

(Testimony of Adolph Sundberg.)

Q. But so far as you remember, then, you do not know that anyone had a rifle there at that time?

A. No, sir.

Q. And you are sure that when you called the men, you did not ask them to bring their rifles?

A. No, sir.

Q. Now, you were taken into the captain's cabin after your injury, and you testified to a conversation in which the captain says that he knew he should have told the boys not to shoot. Was there anything else said by you on that occasion? Did you say anything about how it happened?

A. No, I didn't.

Q. Did you make any statement as to whether it was your fault or not? A. No, sir.

Q. As a matter of fact, didn't you tell Captain Christensen that you felt it was entirely your fault, and you had only yourself to blame?

A. No, sir.

Q. Do you remember the time when your deposition was taken in my office last February?

A. Yes, sir. [25]

Q. And at that time you made—you made no statement at all as to what you have just quoted Captain Christensen as saying, did you?

A. I do not remember that I did or not.

Q. You were asked about all the circumstances, and you never at any time made any claim that the captain made a statement to the effect that he should have told the boys not to shoot, did you?

(Testimony of Adolph Sundberg.)

A. I do not remember whether I did or not. If I was asked, I would have answered it.

Q. Had you yourself done any shooting on the trip? A. No, sir.

Q. Had you been present there watching them?

A. Yes, sir.

Q. You were present most of the time when the shooting took place?

A. Well, I would say several times, anyway.

Q. Had they ever shot sea lions or other live targets before this?

A. Oh, yes,—not at sea lions, no; but they had shot at other things.

Q. What?

A. Well, little blocks of wood or things like that.

Q. Now, at the time this happened, you were off watch and you had no duties about the ship at all? A. That is right.

Q. It happened about what time of day?

A. Well, it was about—about ten o'clock at night, or shortly after.

Q. Wasn't it about eight o'clock? [26]

A. Well, that is right. We didn't set our clock back; that is Seattle time.

Q. And Lewis Varner was also off watch at the time?

A. I do not remember what watch he had then.

Q. The boys had all been down below and were relaxing when you called to them?

A. I do not think Lewis was on duty.

(Testimony of Adolph Sundberg.)

Mr. Seering: That is all.

The Court: Is there anything else?

Mr. Moulton: No, your Honor.

The Court: You may be excused from the stand.
Call your next witness.

Mr. Moulton: I would like to ask the witness another question or two, if your Honor please, which I omitted.

The Court: Very well.

Redirect Examination

By Mr. Moulton:

Q. What information can you give the jury, Mr. Sundberg, as to how much the trip would fairly yield in wages if you had been able to perform the work?

Mr. Seering: That is objected to, if your Honor please. I think the testimony of this witness on that would be pure hearsay and speculative.

The Court: Objection overruled.

By Mr. Moulton:

Q. I will change that. How much did you earn the year before?

A. Well, we had a very poor season the year before; it was a little less than \$400; I do not remember the exact [27] figures.

Q. Do you know about what average earnings the men who work at that get?

A. I checked and they told me——

The Court: He cannot say what they told him.

By Mr. Moulton:

Q. Well, do you know what they averaged?

(Testimony of Adolph Sundberg.)

I think I will suspend the examination of this witness and call another witness.

(The witness was excused.)

MR. LEWIS JACOB VARNER

was called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Moulton:

Q. Your name is what?

A. Lewis Jacob Varner.

Q. And you were on this boat, the "Commonwealth"? A. Yes, sir.

Q. Which went to Port Williams, Alaska, and fished during the fishing season, for the Washington Fish & Oyster Co., did you? A. Yes, sir.

Q. How many boats were fishing for the company?

A. Well, I don't know. There was quite a few boats.

Q. What do you know about what the average earnings of the boats are for the season?

A. Well, it was around \$300—a very poor season. [28]

Q. \$300 for each boat? A. Yes.

Mr. Moulton: That is all.

Mr. Seering: No questions.

The Court: You may step down.

(The witness was excused.)

The Court: Call your next witness.

Mr. Moulton: The plaintiff rests, your Honor.

The Court: The plaintiff rests.

Plaintiff rested.

The Court: The defendant may proceed.

Mr. Seering: The defendant would like to address the Court at this time in the absence of the jury, and make a motion.

The Court: Very well. The jury is excused for the noon recess, or will be excused in just a moment.

(Whereupon, the jury was admonished by the Court.)

(Whereupon, by the direction of the Court, the following proceedings were had in the absence of and out of the hearing of the jury:)

The Court: You may proceed.

Mr. Gose: May it please the Court, the defendant at this time moves for a directed verdict in favor of the defendant in this case, reserving, as the rules entitle us to, the right to proceed in the event that the motion should be denied; that motion being based upon two contentions: The first, that the plaintiff, under the evidence, has shown, and it appears affirmatively, that the plaintiff was not in the course of his employ- [29] ment at the time that he sustained the injuries of which he complains; second, that there is no showing of any negligence upon the part of the defendant in this case and, particularly, no showing of negligence on the part of the defendant or any of his agents then engaged in the course of their employment.

(There was further argument on the motion.)

(Which motion was sustained by the Court, to which ruling of the Court, the plaintiff, by its counsel, then and there duly objected, which objection was overruled and disallowed.)

[Endorsed]: Filed Mar. 5, 1943. [30]

[Endorsed]: No. 10394. United States Circuit Court of Appeals for the Ninth Circuit. Adolph Sundberg, Appellant, vs. Washington Fish & Oyster Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed March 23, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

Case No. 10394

ADOLPH SUNDBERG,

Appellant,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

APPELLANT'S STATEMENT OF POINTS
and
DESIGNATION OF PARTS OF RECORD.

On this appeal appellant intends to rely on the following points:

1. The District Court erred in dismissing appellant's complaint at the close of appellant's case on appellee's motion, and erred in not submitting appellant's case to the jury.

Appellant will make the following contentions:

(a) The evidence showed appellant to be a seaman within the meaning of the Seamen's Act. (U.S.C.A. Title 46, Sec. 688)

(b) In the alternative, if appellant was not a seaman, then he was a passenger on board appellee's vessel.

(c) In either of the events specified in subdivisions (a) and (b) hereof, it was the duty of appellee to keep and maintain the ship in a reasonably safe condition for appellant's occupancy, and to exercise

reasonable supervision and control over the members of the ship's crew to the end that appellant be not exposed to unnecessary hazard during his occupancy of the ship.

(d) The evidence offered by appellant established that with the knowledge and tacit consent of the master of the ship members of the crew, **other than** appellant, continued for a considerable period of time to bring loaded high-powered rifles onto the ship's deck, and without supervision or control to fire the same at random from and across the deck of the ship, and as a result thereof appellant was struck by a ball from one of said rifles and sustained grave and permanent personal injury.

(e) Appellant will contend that the failure of the master of the ship to exercise supervision or control over the members of the crew under the circumstances shown by the evidence constituted actionable negligence and entitled appellant to have the evidence submitted by him considered by the jury.

(f) Appellant will contend that in any event while in the service of the ship as a seaman he sustained personal injury requiring cure, and incurred obligations in that behalf, and was entitled to recover maintenance and cure therefor under the general principles of maritime law.

Appellant requests that there be printed under the direction of the Clerk of the above entitled court the entire transcript of the record as certified to said

Clerk of the District Court, together with this statement of points and designation of parts of the record.

MOULTON & DAVIS

EDGAR E. NEAL

Attorneys for Appellant

ARTHUR F. MOULTON

of Counsel.

Service by copy of the foregoing Appellant's Statement of Points and Designation of Parts of Record is hereby admitted at Seattle, Washington, this 26th day of March, 1943.

J. GORDON GOSE

Of Attorneys for Appellee

[Endorsed] Filed Mar. 29, 1943. Paul P. O'Brien,
Clerk.